

24-2481

**United States Court of Appeals
for the Second Circuit**

NATIONAL INSTITUTE OF FAMILY AND LIFE ADVOCATES, GIANNA'S
HOUSE, INC., CHOOSE LIFE OF JAMESTOWN, INC., doing business as
Options Care Center,
Plaintiffs-Appellees-Cross-Appellants,

v.

Letitia James, *in her official capacity as Attorney General of New York*,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

BRIEF OF LIFE LEGAL DEFENSE FOUNDATION AND DEMOCRATS FOR
LIFE OF AMERICA AS *AMICI CURIAE* IN SUPPORT OF PLAINTIFFS-
APPELLEES AND AFFIRMANCE

CATHERINE W. SHORT

Counsel of Record

SHEILA A. GREEN

Life Legal Defense Foundation

P.O. Box 1313

Ojai, CA 93024-1313

(707) 337-6880

kshort@lifelegal.org

Counsel for Amici Curiae

CORPORATE DISCLOSURE STATEMENT

Life Legal Defense Foundation and Democrats for Life of America are non-profit corporations with no stock or parent corporations.

TABLE OF CONTENTS

CORPORATE DISCLOSURE STATEMENTi

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

STATEMENT OF AMICI CURIAE 1

SUMMARY OF ARGUMENT3

ARGUMENT4

 I. The public interest weighs in favor of upholding the District Court’s grant of a preliminary injunction.4

 A. Plaintiffs and pregnant women possess a First Amendment right to speak and receive information about APR.4

 B. The high incidence of abortion regret weighs in favor of giving pregnant women information about APR.6

 C. The need to reduce the negative mental health consequences associated with abortion weighs in favor of allowing pregnant women access to information about APR.9

 D. Pro-life pregnancy centers serve a vital need of women facing unplanned pregnancies.12

 II. The balancing of the equities supports affirming the District Court’s issuance of a preliminary injunction.13

 A. There is no evidence of harm to any woman as a result of being advised about APR.14

 B. Defendant’s purported concern for health and safety of women is suspect in light of her history of strident abortion advocacy.17

CONCLUSION20

RULE 32 (g) CERTIFICATE OF COMPLAINT22

TABLE OF AUTHORITIES

Cases

<i>Brokamp v. James</i> , 66 F.4th 374 (2d Cir. 2023)	11
<i>Dobbs v. Jackson Women’s Health Org.</i> , 597 U.S. 215 (2022)	1
<i>Gonzales v. Carhart</i> , 550 U.S. 124 (2007)	5
<i>Martin v. Struthers</i> , 319 U.S. 141 (1943)	5
<i>N.Y. Progress & Prot. PAC v. Walsh</i> , 733 F.3d 483 (2d Cir. 2013)	4
<i>Nat’l Inst. for Fam. & Life Advocates v. James</i> , No. 24-CV-514 (JLS), 2024 U.S. Dist. LEXIS 150635 (W.D.N.Y. 2024)	passim
<i>Oswego Lab.ers’ Loc. 214 Pension Fund v. Marine Midland Bank, N.A.</i> , 85 N.Y.2d 20 (N.Y. 1995)	14
<i>People v. Ernst & Young, LLP</i> , 114 A.D.3d 569 (N.Y. App. Div. 2014)	14
<i>Roe v. Wade</i> , 410 U.S. 113 (1973)	1
<i>Sorrell v. IMS Health, Inc.</i> , 564 U.S. 552 (2011)	19
<i>Va. St. Bd. of Pharmacy v. Va. Citizens Consumer Council</i> , 425 U.S. 748 (1976)	5
<i>Winter v. NRDC, Inc.</i> , 555 U.S. 7 (2008)	4, 14
<i>Yang v. Kosinski</i> , 960 F.3d. 119 (2d Cir. 2020)	4

Rules

Fed. Rule of App. Proc. 29(a)(4)(E)	1
Fed. Rule of Civ. Proc. 29(a)(2)	2

Other Authorities

<i>‘No Apologies:’ NY AG Letitia James Tells Protesters ‘I Chose to have an Abortion’</i> , NBC N.Y. (May 4, 2022), https://www.nbcnewyork.com/news/local/ny-attorney-general-letitia- james-i-chose-to-have-an-abortion-years-ago/3673421/	18
<i>2023 Impact Report</i> , Abortion Pill Rescue Network (2023), https://www.heartbeatinternational.org/images/ImpactReports/APRN_Imp act_Report_2023.pdf	12

<i>2025 Commitment to Policy Action</i> , Am. Coll. of Obstetricians & Gynecologists, https://www.acog.org/advocacy/policy-priorities/commitment-to-policy-action	16
<i>Abortion Pill Reversal Has Saved 6,000 Lives Despite Big Abortion's Attempts to Discredit Science Behind It</i> , Heartbeat Int'l (Nov. 20, 2024), https://www.heartbeatinternational.org/component/k2/item/2853-abortion-pill-reversal-has-saved-6-000-lives-despite-big-abortion-s-attempts-to-discredit-science-behind-it	12
Arri Coomarasamy et al., <i>Progesterone to Prevent Miscarriage in Women with Early Pregnancy Bleeding: The PRISM RCT</i> , Health Tech. Assessment (Jun. 2020), https://pubmed.ncbi.nlm.nih.gov/32609084/	6
<i>Attorney General James Challenges Tennessee's Restrictive Abortion Law</i> , Off. of the N.Y. St. Att'y. Gen. (Apr. 8, 2021), https://ag.ny.gov/press-release/2021/attorney-general-james-challenges-tennessees-restrictive-abortion-law	18
<i>Attorney General James Leads Coalition in Fighting to Defend Women's Health and Reproductive Freedom</i> , Off. of the N.Y. St. Att'y Gen. (Jun. 16, 2021), https://ag.ny.gov/press-release/2021/attorney-general-james-leads-coalition-fighting-defend-womens-health-and	18
Carlo V. Bellieni & Guiseppe Buonocore, <i>Abortion and Subsequent Mental Health: Review of the Literature</i> , Psychiatry & Clinical Neurosciences (Jul. 16, 2013), https://onlinelibrary.wiley.com/doi/full/10.1111/pcn.12067	10
Christine Rousselle, <i>Expert on Abortion and Mental Health Says Turnaway Study is 'Flawed,'</i> Cath. News Agency (Jul. 14, 2020), https://www.catholicnewsagency.com/news/45172/expert-on-abortion-and-mental-health-says-turnaway-study-is-flawed	9
Corinne H. Rocca et al., <i>Emotions and Decision Rightness over Five Years Following an Abortion: An Examination of Decision Difficulty and Abortion Stigma</i> , 248 Soc. Sci. & Med. (2020), https://www.sciencedirect.com/science/article/pii/S0277953619306999	8
David C. Reardon & Tessa Longbons, <i>Effects of Pressure to Abort on Women's Emotional Responses and Mental Health</i> , Cureus (Jan. 31, 2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC9981219/	11
David C. Reardon et al. <i>The Effects of Abortion Decision Rightness and Decision Type on Women's Satisfaction and Mental Health</i> , Cureus (May 11, 2023), https://www.cureus.com/articles/146123-the-effects-of-	

abortion-decision-rightness-and-decision-type-on-womens-satisfaction-and-mental-health#!/	7
Debra B. Stulberg, et al., <i>Abortion Provision Among Practicing Obstetrician-Gynecologists</i> , <i>Obstetrics & Gynecology</i> (Sept. 2011), https://journals.lww.com/greenjournal/abstract/2011/09000/abortion_provision_among_practicing.16.aspx	16
George Delgado et al., <i>A Case Series Detailing the Successful Reversal of the Effects of Mifepristone Using Progesterone</i> , 33 <i>Issues L. & Med.</i> 21, 27 (2018), https://www.heartbeatservices.org/images/pdf/Delgado_et_al_Revisions_-_FINAL_0919.pdf	6
Katherine A. Rafferty & Tessa Longbons, <i>#AbortionChangesYou: A Case Study to Understand the Communicative Tensions in Women's Medication Abortion Narratives</i> , 36 <i>Health Comm.</i> 1485 (Jun. 1, 2020), https://doi.org/10.1080/10410236.2020.1770507	7
<i>Letter of 23 State Attorneys General Supporting CVS and Walgreens Decision to Sell Abortion Pills</i> (Feb. 16, 2023) https://ag.ny.gov/sites/default/files/2-16-23_multistate_pharmacy_letter.pdf	18
Maureen Curley & Celeste Johnston, <i>The Characteristics and Severity of Psychological Distress After Abortion Among University Students</i> , <i>J. Behav. Health Serv. & Res.</i> (2013), https://pubmed.ncbi.nlm.nih.gov/23576135/	11
<i>Membership Support, Frequently Asked Questions: Are Dues Used Towards Lobbying</i> , <i>Am. Coll. of Obstetricians & Gynecologists</i> , https://www.acog.org/membership/membership-support	16
Michael J. New, <i>A Flawed Study Claims that Few Women Regret Abortion</i> , <i>Nat'l Rev.</i> (Jan. 15, 2020), https://www.nationalreview.com/corner/a-flawed-study-claims-that-few-women-regret-abortion/	8
Nancy Aries, <i>The American College of Obstetricians and Gynecologists and the Evolution of Abortion Policy, 1951-1973: The Politics of Science</i> , 93 <i>Am. J. of Pub. Health</i> 1810 (Nov. 1, 2003)	17
<i>One in Four US Women Expected to Have an Abortion in Their Lifetime</i> , <i>Guttmacher Inst.</i> (Apr. 17, 2024), https://www.guttmacher.org/news-release/2024/one-four-us-women-expected-have-abortion-their-lifetime	7

Pregnancy Centers Offer Hope for a New Generation 19-21, Charlotte Lozier Inst. (Dec. 2024), <https://lozierinstitute.org/wp-content/uploads/2024/12/Pregnancy-Center-Report-Dec-2024-Interactive.pdf> 12

Priscilla K. Coleman, *Abortion and Mental Health: Quantitative Synthesis and Analysis of Research Published 1995-2009*, Brit. J. Psychiatry (2011), <https://pubmed.ncbi.nlm.nih.gov/21881096/> 10

Rachel K. Jones & Amy Friedrich-Karnik, *Medication Abortion Accounted for 63% of All US Abortions in 2023 – An Increase from 53% in 2020*, Guttmacher Inst., (Mar. 2024), <https://www.guttmacher.org/2024/03/medication-abortion-accounted-63-all-us-abortions-2023-increase-53-2020#> 13

UCSF Women’s Options Center, UCSF Dep’t of Obstetrics, Gynecology & Reprod. Sci. (2021), <https://obgyn.ucsf.edu/gynecology/ucsf-womens-options-center> 8

STATEMENT OF AMICI CURIAE¹

Amicus Life Legal Defense Foundation (“Life Legal”) is a California non-profit corporation that provides legal assistance to pro-life advocates. Life Legal was started in 1989, when massive arrests of pro-life advocates engaging in non-violent civil disobedience created the need for attorneys and attorney services to assist those facing criminal prosecution.

Life Legal is concerned about state and federal governments’ use of their legislative and executive powers to thwart the free speech of those with whom they disagree. With the overturning of *Roe v. Wade*, 410 U.S. 113 (1973), and the return of the issue of abortion “to the people and their elected representatives” (*Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 302 (2022)), the need to protect the speech of pro-life citizens has taken center stage. Because the services of Plaintiff prolife organizations are religiously motivated and offered free of charge, their speech is non-commercial and must be given the highest constitutional protection. Courts must resist the attempts of governments at any level to use their powers to limit the speech of Plaintiffs and others on this life and death issue. Furthermore, women facing a crisis pregnancy have their own First Amendment right to receive

¹ Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), counsel for amicus represent that no counsel for a party authored this brief in whole or in part and that no party, party’s counsel, person or entity, other than amicus or their counsel, made a monetary contribution to the preparation or submission of this brief.

information on all their lawful options, including the Abortion Pill Reversal treatment, unfiltered by the government.

Amicus Democrats for Life of America (“DFLA”) is the preeminent national organization for pro-life Democrats. DFLA believes that the protection of human life at all stages is the foundation of human rights, authentic freedom, and good government. These beliefs animate DFLA’s opposition to abortion, euthanasia, capital punishment, embryonic stem cell research, poverty, genocide, and all other injustices that directly and indirectly threaten human life. DFLA shares the Democratic Party’s historic commitments to supporting women and children, strengthening families and communities, and striving to ensure equality of opportunity, reduction in poverty, and an effective social safety net that guarantees all people sufficient access to food, shelter, health care, and life’s other necessities. In addition, DFLA supports the First Amendment right of women to receive information about pregnancy care and abortion alternatives at pregnancy resource centers.

Pursuant to Federal Rule of Civil Procedure 29(a)(2), amici have obtained consent from the parties to file this *amicus curiae* brief.

SUMMARY OF ARGUMENT

New York Attorney General Letitia James appeals from the District Court’s grant of a preliminary injunction in favor of the Plaintiffs. *Nat’l Inst. for Fam. & Life Advocates v. James*, No. 24-CV-514 (JLS), 2024 U.S. Dist. LEXIS 150635, at *40 (W.D.N.Y. 2024) (“*NIFLA*”). Plaintiff-Appellees are prolife organizations that seek to inform women of the availability of the abortion pill reversal (“APR”) protocol using progesterone. Defendant-Appellant claims that providing this information to pregnant women is commercial speech that is “false or misleading.” Br. for Appellant at 41-47 (“BA”).

The public interest is furthered by protecting the Plaintiffs so they can continue to advise their clients about the availability of progesterone to reverse the effects of abortion drugs. Plaintiffs’ clients are women facing crisis pregnancies, to the point where some of them have already begun the chemical abortion process; they should be offered information that could save their babies’ lives if they change their mind about ending the pregnancy. The balancing of equities militates against allowing a highly partisan state Attorney General committed to expanding abortion to use the judicial system to suppress the speech of those who wish to see fewer, not more, abortions. The District Court’s decision to issue a preliminary injunction should be affirmed.

ARGUMENT

I. The public interest weighs in favor of upholding the District Court’s grant of a preliminary injunction.

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 (2008) (vacating a preliminary injunction because the asserted potential injury to marine mammals by the Navy’s training exercises was outweighed by the interest of the public and the Navy in effective, realistic training of its soldiers) (“*Winter*”); *see also N.Y. Progress & Prot. PAC v. Walsh*, 733 F.3d 483, 486 (2d Cir. 2013) (citing *Winter* and ordering a preliminary injunction in a case involving contributions to a committee making independent political expenditures). The public has an interest in the exercise of free expression; it has no interest in suppressing access to information that allows women to choose to save their babies’ lives.

A. Plaintiffs and pregnant women possess a First Amendment right to speak and receive information about APR.

The deprivation of the right to freedom of speech is a “significant” hardship that runs against the public interest. *Yang v. Kosinski*, 960 F.3d. 119, 136 (2d Cir. 2020) (the public interest in free speech was promoted by a preliminary injunction ordering the New York Board of Elections to reinstate qualified presidential and

delegate candidates to the Democratic primary ballot and to hold the primary election). Similarly, the public interest here is served by preserving Plaintiffs' First Amendment right to freedom of speech, as the District Court correctly held, premised on its holdings on the first two preliminary injunction factors. *NIFLA*, at *26-38.

Women also have a constitutional right to receive information about APR. The Supreme Court has held that “freedom of speech necessarily protects the right to receive” information. *Va. St. Bd. of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748, 757 (1976) (simplified) (voiding a state statute that provided that a licensed pharmacist was guilty of unprofessional conduct if he published, advertised, or promoted any price for prescription drugs because the consumer has an interest in the free flow of information); *see also Martin v. Struthers*, 319 U.S. 141, 143 (1943) (the First Amendment protects the right to distribute and receive written information).

Particularly in the context of abortion, “[t]he State has an interest in ensuring so grave a choice is well informed.” *Gonzales v. Carhart*, 550 U.S. 124, 159 (2007) (upholding federal Partial-Birth Abortion Ban Act as not imposing an undue burden on women). The public interest is therefore served by allowing women to have access to information regarding the use of progesterone, the administration of which has been shown to be safe and effective in the prevention of miscarriages, as

well as in the reversal of the effects of the abortion pill mifepristone.² The administration of progesterone to reverse the effects of mifepristone has been shown to be effective in up to 68% of women who attempted reversal.³ The use of progesterone has also been shown to be safe for women and babies.⁴

Thus, in addition to the Plaintiffs' First Amendment right to disseminate information, the First Amendment right of abortion-minded pregnant women to receive Plaintiffs' information and the state's interest in informed consent both support the preliminary injunction issued by the lower court.

B. The high incidence of abortion regret weighs in favor of giving pregnant women information about APR.

The high rate of abortion regret highlights the urgency in getting information about progesterone to women facing unplanned pregnancies. A peer-reviewed study in 2023 of 1,000 women between the ages of 41 and 45 found that 248 had a

² J.A. at 27-32, ¶¶ 119-42; 600-02; 607; 631-40; *see also* Arri Coomarasamy et al., *Progesterone to Prevent Miscarriage in Women with Early Pregnancy Bleeding: The PRISM RCT*, Health Tech. Assessment (Jun. 2020), <https://pubmed.ncbi.nlm.nih.gov/32609084/> (use of progesterone effective in reducing incidence of recurring miscarriages in women having had three or more prior miscarriages).

³ J.A. at 29-30, ¶¶ 129-33; George Delgado et al., *A Case Series Detailing the Successful Reversal of the Effects of Mifepristone Using Progesterone*, 33 *Issues L. & Med.* 21, 27 (2018), https://www.heartbeatservices.org/images/pdf/Delgado_et_al__Revisions_-_FINAL_0919.pdf.

⁴ J.A. at 637-39, ¶¶ 32-38.

history of abortion.⁵ The response rate for this group of women having abortion histories was 91% (226 out of 248). Of the 226 women who responded to the survey, 10% reported that the abortion was coerced; 14% said that it was unwanted; 42% said they would have given birth had they had more support from others; and 60% said they would have given birth had they had more emotional support or financial security. Only 33% said that the abortion was wanted.⁶ With respect to medication abortions in particular, one review of the website abortionchangesyou.com found that 77% women who posted stated explicitly that they regretted their decision, even if some initially felt relieved.⁷

⁵ This proportion is consistent with the national average. Twenty-five percent of women have had an abortion by age 45. *One in Four US Women Expected to Have an Abortion in Their Lifetime*, Guttmacher Inst. (Apr. 17, 2024), <https://www.guttmacher.org/news-release/2024/one-four-us-women-expected-have-abortion-their-lifetime>.

⁶ David C. Reardon et al. *The Effects of Abortion Decision Rightness and Decision Type on Women's Satisfaction and Mental Health*, Cureus (May 11, 2023), <https://www.cureus.com/articles/146123-the-effects-of-abortion-decision-rightness-and-decision-type-on-womens-satisfaction-and-mental-health#!/>.

⁷ Katherine A. Rafferty & Tessa Longbons, *#AbortionChangesYou: A Case Study to Understand the Communicative Tensions in Women's Medication Abortion Narratives*, 36 Health Comm. 1485 (Jun. 1, 2020), <https://doi.org/10.1080/10410236.2020.1770507>.

These results directly contradict a 2020 study⁸ produced by the pro-abortion Advancing New Standards in Reproductive Health (“ANSIRH”) at the University of California, San Francisco (“UCSF”).⁹ This analysis tracked 667 women who had received abortions over a five-year period. These 667 women represented only 38% of the original cohort of women identified as having previously had abortions. The study found that 99% of the 667 women who participated reported that abortion was the right decision three years after the procedure. At all times in the five-year period, approximately 95% of the women reported that the abortion decision was the right one. As critics have noted, this study is methodologically flawed because 62% of the women who had had an abortion and who were initially interviewed did not participate. It is likely that many of these women failed to respond because of negative emotions associated with the procedure.¹⁰

⁸ Corinne H. Rocca et al., *Emotions and Decision Rightness over Five Years Following an Abortion: An Examination of Decision Difficulty and Abortion Stigma*, 248 Soc. Sci. & Med. (2020), <https://www.sciencedirect.com/science/article/pii/S0277953619306999>.

⁹ The Women’s Options Center at UCSF is a “comprehensive and expert abortion practice.” *UCSF Women’s Options Center*, UCSF Dep’t of Obstetrics, Gynecology & Reprod. Sci. (2021), <https://obgyn.ucsf.edu/gynecology/ucsf-womens-options-center>.

¹⁰ Michael J. New, *A Flawed Study Claims that Few Women Regret Abortion*, Nat’l Rev. (Jan. 15, 2020), <https://www.nationalreview.com/corner/a-flawed-study-claims-that-few-women-regret-abortion/>.

Furthermore, five years after the study began, only 58.4% of the original 667 responded to the survey. The final results, therefore, were based on 22% of the original group of eligible women who had had an abortion and are very likely skewed in favor of those that were satisfied with their abortions. These facts put into serious question the validity of the hard-to-believe 95% statistic of women who expressed satisfaction with their abortions.¹¹

In fact, the conclusion of the UCSF study coincides with the finding of the Reardon study that only 33% of women wanted their abortions. *See* n. 6. As only 38% of women responded to the UCSF study, and 95% of them were happy with their decision, that indicates that 36.1% of all the women originally interviewed were satisfied. This is very close statistically to the 33% that Reardon's study identified as wanting their abortions.

C. The need to reduce the negative mental health consequences associated with abortion weighs in favor of allowing pregnant women access to information about APR.

Closely related to the issue of abortion regret is the connection between abortion and negative mental health. Numerous studies and reviews of studies show a link between abortion and future mental health problems.

¹¹ Christine Rousselle, *Expert on Abortion and Mental Health Says Turnaway Study is 'Flawed,'* Cath. News Agency (Jul. 14, 2020), <https://www.catholicnewsagency.com/news/45172/expert-on-abortion-and-mental-health-says-turnaway-study-is-flawed>.

A 2013 review of studies published between 1995 and 2011 on the mental health effects of abortion, miscarriage, and childbirth found that most studies show that abortion is a risk factor for subsequent mental illness when compared with childbirth. Clinical depression existed in 26% of women who aborted and in only 17% of women who gave birth to a living baby. The study concluded that the negative mental health consequences of abortion is a “serious public health problem” and an “independent risk factor for mental health.”¹²

A 2018 review of 22 studies published between 1995 and 2009 on the effects of abortion on mental health found that women who had had an abortion faced an 81% increased risk of mental health problems as compared to women who had never had one. These effects included marijuana use, suicide behaviors, alcohol use/misuse, depression and anxiety. The risk of these behaviors associated with abortion ranged from 34% to 230% depending on the particular behavior.¹³

In another study of 226 women who had a history of abortion (out of 1,000 who had received a survey), 61% of women reported high levels of pressure to abort from one or more sources. This pressure was associated with negative

¹² Carlo V. Bellieni & Guiseppe Buonocore, *Abortion and Subsequent Mental Health: Review of the Literature*, *Psychiatry & Clinical Neurosciences* (Jul. 16, 2013), <https://onlinelibrary.wiley.com/doi/full/10.1111/pcn.12067>.

¹³ Priscilla K. Coleman, *Abortion and Mental Health: Quantitative Synthesis and Analysis of Research Published 1995-2009*, *Brit. J. Psychiatry* (2011), <https://pubmed.ncbi.nlm.nih.gov/21881096/>.

emotions; disruption of daily life, work, or relationships; thoughts, dreams, or flashbacks to the abortion; feelings of loss, grief or sadness about the abortion; moral and maternal conflict over the abortion decision; a decline in overall mental health that the women attributed to their abortions; and a desire or need for help to cope with negative feelings about the abortion.¹⁴

These studies on abortion regret and mental health challenge the narrative that abortion is a panacea for women facing crisis pregnancies. Offering these women, even those who have already started the abortion pill regimen, the option of saving their babies, thus possibly averting future mental health problems, is clearly in the public as well as in the government's interest. *Brokamp v. James*, 66 F.4th 374, 398 (2d Cir. 2023) (upholding New York's license requirement for mental health counselors, asserting that promoting and protecting the public's mental health is an important governmental interest).

¹⁴ David C. Reardon & Tessa Longbons, *Effects of Pressure to Abort on Women's Emotional Responses and Mental Health*, *Cureus* (Jan. 31, 2023), <https://pmc.ncbi.nlm.nih.gov/articles/PMC9981219/>; *see also* Maureen Curley & Celeste Johnston, *The Characteristics and Severity of Psychological Distress After Abortion Among University Students*, *J. Behav. Health Serv. & Res.* (2013), <https://pubmed.ncbi.nlm.nih.gov/23576135/> (finding that, among university students, all who had had abortions reported symptoms of post-traumatic stress disorder and grief lasting an average of 3 years).

D. Pro-life pregnancy centers serve a vital need of women facing unplanned pregnancies.

In 2024, the Charlotte Lozier Institute (in conjunction with Care Net, Heartbeat International, National Institute of Family and Life Advocates and Option Ultrasound Program by Focus on the Family) conducted a review of the activities of 2750 crisis pregnancy centers for the year 2022. The centers conducted 3,255,856 client sessions, both in person and virtual. Among those centers, 27% (738) provided abortion pill reversal. The clinics provided \$367,896,513 worth of goods and services, all free of charge. Client satisfaction was 97.4%.¹⁵

As of the end of 2023, Heartbeat International estimates that APRN had saved the lives of over 5,000 babies through Heartbeat’s Abortion Pill Rescue Network (“APRN”) alone, with another thousand lives saved just through November 2024.¹⁶ APRN has helped women in all 50 states and in 93 countries.¹⁷ Since APRN is just

¹⁵ *Pregnancy Centers Offer Hope for a New Generation* 19-21, Charlotte Lozier Inst. (Dec. 2024), <https://lozierinstitute.org/wp-content/uploads/2024/12/Pregnancy-Center-Report-Dec-2024-Interactive.pdf>

¹⁶ *Abortion Pill Reversal Has Saved 6,000 Lives Despite Big Abortion’s Attempts to Discredit Science Behind It*, Heartbeat Int’l (Nov. 20, 2024), <https://www.heartbeatinternational.org/component/k2/item/2853-abortion-pill-reversal-has-saved-6-000-lives-despite-big-abortion-s-attempts-to-discredit-science-behind-it>

¹⁷ *2023 Impact Report*, Abortion Pill Rescue Network (2023), https://www.heartbeatinternational.org/images/ImpactReports/APRN_Impact_Report_2023.pdf.

one source to connect women with medical personnel who will provide them with APR, this number necessarily underestimates how many babies have been saved.

The number of chemical abortions has increased significantly in the United States and now accounts for 63% of abortions performed in 2023, up from 53% in 2020.¹⁸ The need for women to be educated about all of their choices, not just the ones that Planned Parenthood and the Defendant want women to know about, is increasing. The public interest is certainly served by giving women the option of learning about APR, which could save lives and avoid the mental health consequences of abortion, particular abortions already regretted within minutes or hours of taking the first abortion pill.

II. The balancing of the equities supports affirming the District Court's issuance of a preliminary injunction.

The factors in favor of a preliminary injunction, as discussed above, are 1) the First Amendment right of Plaintiffs to speak on the existence and benefits of APR, 2) the First Amendment right of women facing crisis pregnancies to receive information about APR, 3) the government's interest in informed consent regarding abortion, 4) the avoidance of abortion regret, 5) the avoidance of future mental

¹⁸ Rachel K. Jones & Amy Friedrich-Karnik, *Medication Abortion Accounted for 63% of All US Abortions in 2023 – An Increase from 53% in 2020*, Guttmacher Inst., (Mar. 2024), <https://www.guttmacher.org/2024/03/medication-abortion-accounted-63-all-us-abortions-2023-increase-53-2020#>.

health problems resulting from abortion, 6) the potential for saving innocent babies' lives. *See* Sec. I, *supra*.

In opposition to these indisputably weighty interests, Defendant Letitia James, in her capacity as the Attorney General of New York, asserts the government's interest in "protecting consumers from false or misleading advertising." BA at 51. This purported interest is not supported by any evidence.

A. There is no evidence of harm to any woman as a result of being advised about APR.

Despite the growing number of women who are choosing APR (*see* Sec. I.D.), the Defendant has not identified a single one that has been harmed. *NIFLA*, at *34. The Attorney General asserts that "a preliminary injunction cannot be justified on the basis of any lack of record evidence of harm," but the cases the Attorney General cites are inapposite to the balancing of equities here.¹⁹ The lack of proof of harm *is* relevant to the issuance of a preliminary injunction. For example, in *Winter*, when balancing the equities and considering the public interest, the Supreme Court considered *the absence of any evidence of harm* to marine mammals resulting from the Navy's sonar exercises over a period of 40

¹⁹ BA at 52. *Oswego Lab.ers' Loc. 214 Pension Fund v. Marine Midland Bank, N.A.*, 85 N.Y.2d 20 (N.Y. 1995) (denying bank's motion for summary judgment); *People v. Ernst & Young, LLP*, 114 A.D.3d 569 (N.Y. App. Div. 2014) (equitable remedy of disgorgement is available when ill-gotten gains from fraudulent conduct is involved).

years and decided in favor of the Navy, denying the preliminary injunction requested by environmental groups. *NIFLA* at *33.

Even more so, when the government’s justification for suppressing speech is a purported interest in protecting pregnant women from receiving inaccurate information about the safety and efficacy of APR (BA at 42-43, 51-52), its inability to adduce any evidence of harm from the dissemination of this supposedly inaccurate information is highly relevant to the balancing of equities and the public interest factors. Here, progesterone has been safely used for decades to treat various medical conditions.²⁰ It has been used since 2008 to reverse the effects of chemical abortion pills.²¹ The lack of evidence of harm supports the issuance of the preliminary injunction to protect Plaintiffs’ speech from government interference.

Defendant’s reliance on the opinion of the American College of Obstetricians and Gynecologists (“ACOG”) does not help her case. BA at 5, 7, 13. While ACOG disputes studies that show the efficacy of APR and calls the protocol “scientifically unproven” (*id.* at 5), it has produced no study showing evidence of harm from prescribing women progesterone to reverse the effects of mifepristone. ACOG reveals its priorities when it opposes a life-favoring treatment having no

²⁰ J.A. at 601-02.

²¹ J.A. at 513, ¶ 68.

evidence of harmful effects, while at the same time promoting abortion-inducing drugs carrying significant health risks.²²

Moreover, ACOG does not speak with the authority of its membership.

Although 97% of OB/GYNs have encountered women seeking abortion, only 14% of them perform them.²³ Furthermore, ACOG engages in pro-abortion lobbying.²⁴

Despite the opposition of many of its members, they are essentially forced to support this lobbying through their dues.²⁵ One study concluded that ACOG's pro-abortion position was driven by the desire to preserve physician autonomy over abortion services, rather than science.²⁶

²² Mifepristone has a “black box” warning due to risk of hemorrhage and infection; it is more dangerous than surgical abortion; 1 in 25 women who take it will end up in the emergency department. J.A. at 629, ¶ 15.

²³ Debra B. Stulberg, et al., *Abortion Provision Among Practicing Obstetrician-Gynecologists*, *Obstetrics & Gynecology* (Sept. 2011), https://journals.lww.com/greenjournal/abstract/2011/09000/abortion_provision_among_practicing.16.aspx.

²⁴ *2025 Commitment to Policy Action*, Am. Coll. of Obstetricians & Gynecologists, <https://www.acog.org/advocacy/policy-priorities/commitment-to-policy-action> (last visited Feb. 17, 2025).

²⁵ *Membership Support, Frequently Asked Questions: Are Dues Used Towards Lobbying*, Am. Coll. of Obstetricians & Gynecologists, <https://www.acog.org/membership/membership-support> (last visited Feb. 17, 2025).

²⁶ A study of the evolution of ACOG's abortion policy from pro-life (abortion permissible only when the woman's life was at risk) to pro-abortion concluded that “*decisions were only secondarily determined by science*. The principal determinant

In short, ACOG is not an objective authority on the issue of abortion. It has taken sides in what is essentially a policy debate, without the support of its members. And neither ACOG, nor the Defendant, has provided any evidence of harm resulting from the use of progesterone to reverse the effect of mifepristone. The proof is in the proverbial pudding.

B. Defendant’s purported concern for health and safety of women is suspect in light of her history of strident abortion advocacy.

Although Defendant Attorney General purports to be enforcing generally applicable consumer protection laws against “false or misleading advertising,” she has exercised her office as a partisan pro-abortion advocate, both before and since becoming Attorney General of New York. The Complaint cites many instances of her pro-abortion advocacy.²⁷

Additionally, she has used her position as Attorney General to promote abortion beyond the State’s borders. In 2021, she led a coalition of attorneys general in submitting testimony to Congress supporting the passage of the Women’s Health Protection Act, which would have prohibited states from

was the need to preserve physician autonomy over the organization and delivery of services.” Nancy Aries, *The American College of Obstetricians and Gynecologists and the Evolution of Abortion Policy, 1951-1973: The Politics of Science*, 93 Am. J. of Pub. Health 1810 (Nov. 1, 2003).

²⁷ J.A. at 48-57, ¶¶ 237-78.

imposing any restrictions on abortion.²⁸ In 2021, she “continued her leadership in the national fight to ensure women’s reproductive health care is not stifled or infringed upon in any way” by joining a coalition of twenty state attorneys general in filing an amicus brief supporting Tennessee abortion businesses in their challenge to a state law requiring women seeking abortions to attend two in-person appointments with doctors before undergoing the procedure.²⁹ In 2023, the Defendant joined twenty-three other state attorneys general in sending a letter of support to CVS and Walgreens for their decision to offer mifepristone and misoprostol in their pharmacies.³⁰ These are only a few examples of her unrelenting support of abortion.³¹

²⁸ *Attorney General James Leads Coalition in Fighting to Defend Women’s Health and Reproductive Freedom*, Off. of the N.Y. St. Att’y Gen. (Jun. 16, 2021), <https://ag.ny.gov/press-release/2021/attorney-general-james-leads-coalition-fighting-defend-womens-health-and>.

²⁹ *Attorney General James Challenges Tennessee’s Restrictive Abortion Law*, Off. of the N.Y. St. Att’y. Gen. (Apr. 8, 2021), <https://ag.ny.gov/press-release/2021/attorney-general-james-challenges-tennessees-restrictive-abortion-law>.

³⁰ *Letter of 23 State Attorneys General Supporting CVS and Walgreens Decision to Sell Abortion Pills* (Feb. 16, 2023) https://ag.ny.gov/sites/default/files/2-16-23_multistate_pharmacy_letter.pdf.

³¹ Indeed, the Attorney General has publicly boasted of having had an abortion at a Planned Parenthood clinic. *‘No Apologies:’ NY AG Letitia James Tells Protesters ‘I Chose to have an Abortion’*, NBC N.Y. (May 4, 2022), <https://www.nbcnewyork.com/news/local/ny-attorney-general-letitia-james-i-chose-to-have-an-abortion-years-ago/3673421/>. For the Defendant, the fight is not just political; it’s personal.

As the District Court noted, “[T]he State cannot engage in content-based discrimination to advance its own side of a debate.” *NIFLA*, at *34 (citation omitted). While targeting pro-life groups with spurious accusations of fraud with no actual victims, the Defendant has done nothing to address the documented dangers of chemical abortion.³² Her one-sided advocacy, using her official position, is proof of her bias towards her preferred point of view. “The State has burdened a form of protected expression that it found too persuasive. At the same time, the State has left unburdened those speakers whose messages are in accord with its own view. This the State cannot do.” *Sorrell v. IMS Health, Inc.*, 564 U.S. 552, 580 (2011) (state law that restricted the sale, disclosure and use of prescriber-identifying information held unconstitutional as content-based discrimination).

Furthermore, the concern for the free flow of information “has great relevance in the fields of medicine and public health, *where information can save lives.*” *Id.* at 566 (*emphasis added*). The Defendant should not be allowed to wield the immense power at her disposal as Attorney General to further her own agenda, whether personal, ideological, or political, especially when lives and the free flow of information are at stake. Defendant may wish to ignore those lives, but she

³² J.A. at 55-57, ¶¶ 271-80.

cannot, consistent with the U.S. Constitution, muzzle those who recognize and try to save them.

The public interest and the balancing of the equities are clearly in favor of the Plaintiffs' constitutional right to freedom of speech and pregnant women's right to hear about the life-saving possibility of abortion pill reversal. The Defendant has identified no victims of the progesterone protocol used to reverse the effects of the abortion drugs. Defendant's assertion that the State has an interest in suppressing information because of her own personal and political ideology cannot outweigh the public interest in free speech in women being provided with critical information relevant to their pregnancy decision and in the protection of innocent human life.

CONCLUSION

For the foregoing reasons, the court should affirm the decision of the District Court to issue a preliminary injunction protecting Plaintiffs' exercise of free speech and the right of abortion-minded women to receive information highly relevant to their decisions.

Dated: March 20, 2025

Respectfully submitted,

CATHERINE SHORT

Counsel of Record

SHEILA A. GREEN

LIFE LEGAL DEFENSE FOUNDATION

PO Box 2105

Napa, CA 94558

(707) 224-6675

kshort@lifelegal.org

Counsel for Amici Curiae

**RULE 32 (g) CERTIFICATE OF COMPLAINT
WITH FEDERAL RULE OF APPELLATE PROCEDURE**

I certify that this brief complies with the type-volume limitation of Local Rule 29.1(c), the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5)(A), and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6). This brief was prepared using a proportionally spaced typeface (Times New Roman, 14 point). Exclusive of the portions exempted by Federal Rule of Appellate Procedure 32(f), this brief contains 4,386 words. This certificate was prepared in reliance on the word-count function of the word- processing system (Microsoft Word 2019) used to prepare this brief.

/s/ Catherine W. Short